

2009 JUL -7 PM 3: 50

# CELA

**999 E Street, N.W.  
Washington, D.C. 20463**

## FIRST GENERAL COUNSEL'S REPORT

**DATE ACTIVATED:** March 2, 2009

**EXPIRATION OF SOL: January 1, 2012**

**Christopher Shays (MUR 6162)**

**Christopher Shays for Congress Committee  
and Christopher Shays, in his official  
capacity as Treasurer  
Michael Sohn**

2 U.S.C. § 432(b), (c)  
2 U.S.C. § 434(b)  
2 U.S.C. § 439a(b)  
11 C.F.R. § 102.15  
11 C.F.R. § 104.14  
11 C.F.R. § 113.1(g)

**None**

**FEDERAL AGENCIES CHECKED:**

## I. INTRODUCTION

**These matters were initiated by a complaint filed by Christopher Shays for Congress Committee ("the Committee") and former Congressman**

1 Christopher Shays to report that a former campaign manager, Michael Sohn,  
2 misappropriated Committee funds, which resulted in violations of the Act by both the  
3 Committee and Mr. Sohn.

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5 ; MUR 6162 Complaint (Michael Sohn) (alleging violations of 2 U.S.C. §§  
6 432(b)(3) and 439a(b)). Although we have been contacted by Mr. Sohn's counsel, there  
7 has been no response to the Complaint.

8 In late 2008, the Committee discovered that Mr. Sohn had been misappropriating  
9 funds, and, consequently, its disclosure reports for at least 2007-2008, and possibly prior  
10 cycles, did not accurately reflect disbursements relating to unauthorized checks forged by  
11 Mr. Sohn made payable to himself and unauthorized cash withdrawals and personal  
12 expense purchases Mr. Sohn made using the Committee's debit card.

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14 Mr. Sohn misappropriated  
15 approximately \$150,000 during 2007-2008.

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18 the Committee has amended its 2007-2008  
19 disclosure reports to reflect \$176,218.66 in previously unreported or misreported  
20 disbursements. Although the Committee believes that Mr. Sohn also misappropriated  
21 funds during 2005-2006, it has been unable to quantify the extent of the misreporting for  
22 this period, and its ability to do so may have to await the return of records seized in  
23 connection with an ongoing federal criminal investigation of Mr. Sohn.

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1 While the Committee acknowledges filing inaccurate disclosure reports as a result  
2 of Mr. Sohn's actions, it maintains that it had implemented internal controls prior to the  
3 embezzlement and took actions fully consistent with the Commission's Statement of  
4 Policy: Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16,695 (April  
5 5, 2007) ("Safe Harbor Policy") and Internal Controls for Political Committees, *available*  
6 *at* <http://www.fec.gov/law/policy.shtml#guidance>, and requests that the Commission take  
7 no action against it

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15 **II. FACTUAL AND LEGAL ANALYSIS**

16 **A. Factual Background**

17 Christopher Shays for Congress Committee was the authorized campaign  
18 committee of former Republican House Member Christopher Shays for various  
19 successive elections, including the 2008 election cycle.<sup>1</sup> Since May 2009, Christopher  
20 Shays has served as the Committee's treasurer. Michael Sohn, who joined the  
21 Committee's staff in 2001 and served as the campaign manager for three election cycles,

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<sup>1</sup> The Committee is still registered with the Commission and continues to raise funds and file reports with the Commission. As of March 31, 2009, the Committee reported over \$199,000 in debts and obligations and just over \$3,000 cash-on-hand.

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1 was responsible for day-to-day operations and the initial approval of expenditures. )

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3 Committee procedures required Mr. Sohn to submit requests for payment of  
4 approved expenditures to the Committee's then-treasurer, Ralph DePanfilis, who had sole  
5 authority to sign Committee checks. *Id.* at 1-2. In late 2008, the Committee's routine  
6 review of financial records revealed several inconsistencies that Mr. DePanfilis was  
7 unable to reconcile. *Id.* In late November 2008, after several failed attempts to meet  
8 with Mr. Sohn, Mr. DePanfilis decided to personally inspect Committee records at the  
9 bank. *Id.* During that meeting, Mr. DePanfilis presented the bank with the records  
10 provided to him by Mr. Sohn, and the bank determined, after examining its own records,  
11 that the records Mr. DePanfilis presented had been altered. Further, it appeared that  
12 someone, presumably Mr. Sohn, had forged Mr. DePanfilis's signature on numerous  
13 Committee checks. *Id.*

14 The Committee secured its account by cancelling its debit card, opening a new  
15 account, and segregating the duties of account reconciliation and bank statement analysis  
16 from the individuals with check-signing authority or bookkeeping responsibilities. *Id.*  
17 The Committee also sought to identify and validate each vendor transaction to verify  
18 whether Mr. Sohn approved legitimate payments. *Id.* at 3-4. The Committee also  
19 obtained records Mr. Sohn prepared using Aristotle Campaign Manager Software. *Id.*  
20 The Committee reported that it has reviewed data from January 1, 2007, by identifying  
21 checks, withdrawals, and deposits that appear unverified. *Id.*

22 The Committee's internal review revealed that Mr. Sohn forged Mr. DePanfilis's  
23 signature on Committee checks payable to Mr. Sohn that totaled approximately \$55,000

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1 in 2007 and \$27,000 in 2008. Second, Mr. Sohn made unauthorized debit card cash  
2 withdrawals of approximately \$20,000 in 2007 and approximately \$49,000 in 2008.<sup>2</sup> *Id.*  
3 Although the Committee's submission indicates that Mr. Sohn also used the debit card  
4 for personal expenses, there currently is no reliable estimate as to the amount of  
5 additional unauthorized expenses. *Id.* at 5. Lastly, the Committee noted that Mr. Sohn  
6 allegedly deleted items from the Committee's bank statements and failed to record  
7 contributions or removed records of contributions from the Committee's internal database  
8 to balance the cash in the Committee's account. *Id.*

9 Mr. DePanfilis reported his findings to Shays and the Committee's attorney, who,  
10 in turn, reported the allegations of misappropriation to the U.S. Attorney's Office in late  
11 November 2008. *Id.* at 2-3. The Committee sought guidance from the Commission's  
12 Reports and Analysis Division ("RAD") on filing its upcoming report with the  
13 Commission. *Id.* RAD received information about the allegations on December 2, 2008.  
14 *Id.*

15 On February 9,  
16 2009, the Committee filed comprehensive amendments to its 2007-2008 disclosure  
17 reports, and RAD recently issued Requests for Additional Information as to the amended  
18 reports.

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<sup>2</sup> The amended reports reflect slightly different totals for both the unauthorized checks (\$58,385.48 in 2007 and \$33,498.54 in 2008) and the unauthorized cash withdrawals (\$19,520.20 in 2007 and \$45,166.25 in 2008).

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**B. Discussion**

**1. Committee Liability**

Under the Act, committees, through their treasurers, are required to disclose disbursements and cash-on-hand balances accurately. *See* 2 U.S.C. § 434(b)(1), (4) and (6)(B)(v); 11 C.F.R. § 104.3(a)(1) and (b). Committee treasurers are responsible for the timely and complete filing of disclosure reports and for the accuracy of the information they contain. *See* 11 C.F.R. § 104.14(d). Under the Act, a committee, through its treasurer, is also required to keep an accurate account of receipts and disbursements. *See* 2 U.S.C. §§ 432(c)(5), 434(b)(2), (3), (4), and (6) and 11 C.F.R. § 104.3(b).

Notwithstanding the Act's strict liability for violations of reporting requirements, the Commission has opined that a committee that maintains adequate financial controls should not be penalized for inaccurate reports that result from misappropriations by committee staff. *See* Safe Harbor Policy under 72 Fed. Reg. 16,695 (April 5, 2007). To guide the regulated community, the Commission articulated the minimum internal controls committees should implement to avoid penalties for misreporting as the result of embezzlement. *Id.* The presence of the enumerated controls and post-discovery activities in the Safe Harbor Policy determines whether the Commission will seek a civil penalty against a committee. *See id.* n.1 (stating that the internal controls and post-discovery steps "represent the *minimum* efforts a committee *must* take to qualify for this safe harbor.") (emphasis added). However, the Commission will consider "the presence of some, but not all," of the enumerated controls and post-discovery activities in the Safe

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1 Harbor Policy as a mitigating factor to any civil penalty it assesses against a committee  
2 that fails to qualify for the protection of the Safe Harbor.<sup>3</sup> *Id.*

3 These safeguards include: (1) opening all bank accounts in the name of the  
4 committee using its Employer Identification Number; (2) monthly bank reconciliations  
5 by someone other than the individual with check signing authority or who has  
6 responsibility for the committee's accounting; (3) dual-signing authority for checks over  
7 \$1,000; (4) procedures for handling incoming receipts by someone other than the  
8 individuals with accounting or banking authority; and (5) safeguards for managing a petty  
9 cash account. *Id.* Further, when a committee discovers misappropriation of funds, it  
10 must notify the Commission and relevant law enforcement authority and promptly amend  
11 its disclosure reports to correct any errors. *Id.*

12 In appropriate circumstances, the Commission has held committees responsible  
13 for failure to comply with the Act even when non-compliance was due to embezzlement  
14 by committee staff. The failure to implement adequate internal control procedures  
15 regarding committee finances has been a consideration when determining whether to  
16 pursue committee liability in embezzlement cases. *See* MUR 5610 (Haywood/Dole);<sup>4</sup>

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<sup>3</sup> In addition to the Safe Harbor Policy, the Commission provides additional guidance intended to "provide the triple benefit of assisting the committee in meeting its goals, protecting committee assets, and facilitating the filing of accurate disclosure reports." *See* Internal Controls for Political Committees, available at [http://www.fec.gov/law/policy.shtml#guidance/internal\\_controls\\_polcmtes\\_07.pdf](http://www.fec.gov/law/policy.shtml#guidance/internal_controls_polcmtes_07.pdf). The controls "are not mandatory requirements but are intended to assist committees in protecting their assets and complying with the requirements of the FECA." *See id.* While compliance with the best practices guide is of no consequence for purposes of the Safe Harbor Policy, the Committee appeared to lack safeguards suggested by the best practices guide that could have deterred Mr. Sohn's actions, including (1) the fact he had unsupervised access to the Committee's debit card and (2) the Committee failed to thoroughly segregate responsibilities by restricting Mr. Sohn, who had access to the Committee's database and transaction processing, from access to statements and other bank records.

<sup>4</sup> An investigation found the committee lacked sufficient internal controls as the assistant treasurer "was responsible for all of the functions of the accounting and reporting operation," including the receipt of contributions, disbursements, check signing authority, and filing reports with the Commission. MUR 5610 Factual and Legal Analysis ("F&LA") at 3. The committee was likewise aware that it provided limited

1 MUR 5923 (American Dream PAC); MUR 5872 (Jane Hague for Congress); MUR 5721  
2 (Lockheed Martin Employees PAC); MUR 5811 (Doggett for Congress); MUR 5812  
3 (Ohio State Medical Association PAC); MUR 5813 (Georgia Medical PAC); MUR 5814  
4 (Lamutt for Congress); MUR 5920 (Women's Campaign Fund). *But see* MUR 5971  
5 (Lindsey Graham for Senate) (narrowing committee liability where the embezzlement  
6 preceded implementation of the Safe Harbor Policy);

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13 In the present matter, the Committee had implemented some, but not all, of the  
14 internal controls suggested by the Safe Harbor Policy prior to the embezzlement. Among  
15 the controls in the Safe Harbor Policy, the Committee had (1) opened its account in the  
16 Committee's name and with a company identification number, (2) reconciled bank  
17 statements to its accounting records every month and prior to filing with the Commission,  
18 and (3) assigned a staff assistant to be responsible for handling incoming receipts.

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20 While the Committee also complied with all  
21 the post-discovery activities in the policy, it failed to implement a dual signature

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internal controls on the assistant treasurer. *Id.* at 7 (stating that the treasurer's unchecked authority over committee finances had the appearance that "he was permitted to make disbursements without prior authorization of other Committee personnel.").

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1 requirement for checks over \$1,000.<sup>5</sup>

2 Such a requirement may have helped deter the embezzlement at issue in this  
3 matter. In the absence of any of the required minimum controls, the Committee does not  
4 qualify for the Safe Harbor. *See* Safe Harbor Policy, 72 Fed. Reg. 16,695 n.1 (April 5,  
5 2007).

6 Accordingly, the Office recommends the Commission find reason to believe that  
7 Christopher Shays for Congress Committee and Christopher Shays, in his official  
8 capacity as treasurer, violated 2 U.S.C. §§ 432(c) and 434(b) by failing to properly track  
9 disbursements and accurately report receipts and disbursements in disclosure reports filed  
10 with the Commission due to Mr. Sohn's embezzlement.

11 2. Michael Sohn's Liability

12 The Act prohibits any person from converting contributions to a Federal candidate  
13 for personal use. 2 U.S.C. § 439a(b)(1). "Personal use" means any use of funds in a  
14 campaign account of a federal candidate to fulfill a commitment, obligation or expense of  
15 any person that would exist irrespective of the candidate's campaign duties. 11 C.F.R. §  
16 113.1(g). The term "person" includes individuals and committees. 2 U.S.C. § 431(11).

17 The Act further prohibits the commingling of committee federal funds with "the  
18 personal funds of any individual," including officers of a committee. 2 U.S.C. §  
19 432(b)(3); 11 C.F.R. § 102.15. The Commission has previously made findings that  
20 individuals violated 2 U.S.C. § 432(b)(3) in matters where individuals misappropriated  
21 committee funds by making unauthorized disbursements to themselves or others to pay  
22 for personal expenses. *See, e.g.*, MUR 5923 (American Dream PAC); MUR 5920

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<sup>5</sup> The procedures for managing a petty cash fund are not applicable in this matter because the Committee did not have a petty cash fund.

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(Women's Campaign Fund); MUR 5721 (Doggett for U.S. Congress). *But see* MUR 5898 (Pennington)(the Commission voted 3-3 not to accept a negotiated conciliation agreement including an admission as to violating 2 U.S.C. § 432(b)(3), based on differing views as to whether money deposited in embezzler's personal account were co-mingled Committee funds).

The Act also addresses violations that are knowing and willful. *See* 2 U.S.C. § 437g(a)(5)(B). The knowing and willful standard requires knowledge that one is violating the law. The phrase "knowing and willful" indicates that "acts were committed with full knowledge of all of the relevant facts and a recognition that the action is prohibited by law. . ." 122 Cong. Rec. H3778 (daily ed. May 3, 1976); *see also* *AFL-CIO v. FEC*, 628 F.2d 97, 98, 101-02 (D.C. Cir.), *cert. denied*, 449 U.S. 982 (1980) (noting that a "willful" violation includes "such reckless disregard of the consequences as to be equivalent to a knowing, conscious, and deliberate flaunting of the Act," but concluding on the facts before it that this standard was not met) (cited in *National Right to Work Comm. v. FEC*, 716 F.2d 1401, 1403 (D.C. Cir. 1983)). An inference of knowing and willful conduct may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. *United States v. Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990). The evidence need not show that the defendant "had specific knowledge of the regulations" or "conclusively demonstrate" a defendant's "state of mind," if there are "facts and circumstances from which the jury reasonably could infer the [the defendant] knew her conduct was unauthorized and illegal." *Id.* at 213 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 439 U.S. 838 (1989)).

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1 In amended reports filed with the Commission, Mr. Sohn used Committee funds  
2 for personal expenses that, among others, included payments of cellular phone bills,  
3 electronic goods, hotels, restaurants, and even a donation to a synagogue.

4 . Mr. Sohn also wrote checks to himself from Committee  
5 accounts in the amount of \$91,884.02, cashed or deposited the checks into his personal  
6 bank account, and issued disbursements to his personal creditors in violation of 2 U.S.C.  
7 §§ 439a and 432(b)(3). Mr. Sohn disguised his activity by making false entries into the  
8 Committee's internal database, manipulating copies of checks and bank statements, and  
9 providing false input for Committee disclosure reports. *See supra* Part II.A.

10 Accordingly, because these expenses existed irrespective of the candidate's  
11 election campaign, Sohn converted Committee funds to personal use in violation of 2  
12 U.S.C. § 439a(b). Mr. Sohn also co-mingled Committee funds with his personal assets in  
13 violation of 2 U.S.C. § 432(b)(3). Consequently, we recommend that the Commission  
14 find reason to believe that Michael Sohn knowingly and willfully violated 2 U.S.C. §§  
15 439a(b) and 432(b)(3).

16 **III. INVESTIGATION**

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We

nonetheless recommend formal discovery be authorized, to be used if needed, to ensure the efficient, accurate, and complete discovery of the information required to resolve this matter.

**IV. RECOMMENDATIONS**

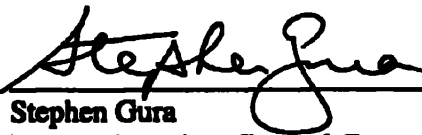
1. Find reason to believe that Christopher Shays for Congress Committee and Christopher Shays, in his official capacity as treasurer, violated 2 U.S.C. §§ 432(c) and 434(b).
2. Find reason to believe that Michael Sohn knowingly and willfully violated 2 U.S.C. §§ 439a(b) and 432(b)(3).
3. Approve the attached Factual and Legal Analyses.
4. Authorize the use of compulsory process against all respondents and witnesses in this matter, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary.
5. Approve the appropriate letters.


Thomasenia P. Duncan  
General Counsel


7/7/09

Date

BY:

  
Stephen Gura  
Deputy Associate General Counsel  
for Enforcement

  
Mark Shonkwiler  
Assistant General Counsel

  
Phillip A. Olaya  
Attorney

Attachments:

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